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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 **NEVADA IRRIGATION DISTRICT,**

13 Plaintiff,

14 v.

15
16 **ERIC OPPENHEIMER, in his official
capacity as Executive Director of the
17 California State Water Resources Control
Board,**

18 Defendant.
19

2:21-cv-00851-DJC-CKD

**STIPULATION AND ORDER TO
DISMISS**

Judge: Hon. Daniel J. Calabretta

Action Filed: 12/04/2020

20
21 WHEREAS on December 4, 2020, Plaintiff Nevada Irrigation District (NID) filed its
22 Complaint;

23 WHEREAS on September 22, 2021, Defendants Eileen Sobek, et al., filed a Motion to
24 Dismiss, or, in the alternative, Motion to Stay Plaintiff's Complaint on the grounds that this Court
25 lacks jurisdiction to hear NID's claims because NID's claims are not ripe, because NID lacks
26 Article III standing, and because the Eleventh Amendment immunizes Defendants from suit in
27 federal court (ECF No. 37);
28

1 WHEREAS on December 6, 2023, the Court granted the motion in part and denied it in
2 part (ECF No. 72), granting NID leave to amend within 30 days of the issuance of that Order;

3 WHEREAS NID filed a First Amended Complaint on January 5, 2024, which, among
4 other things, substituted the State Water Resources Control Board's new Executive Director Eric
5 Oppenheimer for the now-retired former Executive Director Eileen Sobeck;

6 WHEREAS, pursuant to rule 144 of the Local Rules, the Court approved the parties' first
7 stipulation extending the deadline for Defendant's responsive pleading to February 2, 2024;

8 WHEREAS, pursuant to rule 144 of the Local Rules, the court approved the parties'
9 second stipulation extending the deadline for Defendant's responsive pleading to June 2, 2024
10 (ECF No. 81);

11 WHEREAS on May 7, 2024, the State Water Resources Control Board (State Water
12 Board) set aside the water quality certification at issue in this lawsuit and dismissed NID's
13 September 10, 2020 petition for administrative reconsideration of the certification by adopting
14 Order WQ 2024-0046;

15 WHEREAS the statutory time period for any aggrieved party to file a petition for writ of
16 mandate for review of the State Water Board's May 7, 2024 administrative action ran from 30
17 days following said action (Wat. Code § 13330, subd. (a));

18 WHEREAS, no petitions for writ of mandate challenging that action were filed within the
19 statutory time period, and under California law Order WQ 2024-0046 is no longer subject to
20 judicial review (Wat. Code § 13330, subd. (a));

21 WHEREAS, administrative reconsideration by the State Water Board is not available for
22 Order WQ 2024-0046 because the administrative reconsideration process applies only to actions
23 or failures to act under authority delegated by the State Water Board, not action or failure to act
24 by the five-member State Water Board itself. (Cal. Code Regs., tit. 23, § 3867, subds. (a)&(b));

25 WHEREAS, pursuant to rule 144 of the Local Rules, the court approved the parties' third
26 stipulation requiring that the parties meet and confer and report on the effect of the State Water
27 Board's Order WQ 2024-0046 on this litigation by July 1, 2024, and extending the State Water
28 Board's responsive pleading deadline to August 1, 2024 (ECF No. 84);

1 WHEREAS, on June 27, 2024, the parties met and conferred on the effect of Order WQ
2 2024-0046 on NID's claims in the current action and have agreed that NID's claims in this action
3 are moot;

4 THEREFORE, the parties, by and through their respective counsel, stipulate as follows:

- 5 1. NID hereby voluntarily dismisses all claims in this action without prejudice.
- 6 2. Each party agrees to bear its own costs and fees with regard to this action.
- 7 3. This stipulation may be executed in counterpart originals and by facsimile or
8 electronic signature, each of which shall be deemed to be an original, and all of which shall
9 constitute one and the same document.

10 **IT IS SO STIPULATED.**

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12 Dated: July 1, 2024

VAN NESS FELDMAN LLP

13 */s/ Jenna R. Mandell-Rice*

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15 _____
JENNA R. MANDELL-RICE
Attorneys for Plaintiff
Nevada Irrigation District

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18 Dated: July 1, 2024

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ERIC M. KATZ
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21 */s/ Kristin K. McCarthy*

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KRISTIN K. MCCARTHY
Deputy Attorneys General
Attorneys for Defendant Eric Oppenheimer
in his official capacity as Executive Director
of the State Water Resources Control Board

ORDER

Based on the parties' stipulation, the case is hereby dismissed without prejudice. Each party is to bear its own costs and fees.

IT IS SO ORDERED.

Dated: July 2, 2024

/s/ Daniel J. Calabretta

THE HONORABLE DANIEL J. CALABRETTA
UNITED STATES DISTRICT JUDGE